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Attorneys for Fire Victim Claimants, including Benjamin Walker

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

PG&E CORPORATION

-and-

PACIFIC GAS AND ELECTRIC
COMPANY

Debtors.

☐ Affects PG&E Corporation

☐ Affects Pacific Gas & Electric

☒ Affects Both Debtors

*All papers shall be filed in the Lead Case,
No. 19-30088 (DM)*

) **Case No. 19-30088 (DM)**
) Chapter 11
) (Lead Case)
) (Jointly Administered)
) **MOTION TO ALLOW/DEEM TIMELY**
) **LATE FILING OF PROOF OF CLAIM**
) **BY BENJAMIN WALKER;**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT**
) **THEREOF; DECLARATION OF**
) **BENJAMIN WALKER**
) Date: June 7, 2022
) Time: 10:00 a.m.
) Place: **To Be Held Telephonically**
) United States Bankruptcy Court
) Courtroom 17
) 450 Golden Gate Avenue
) 16th Floor
) San Francisco, CA
) Judge: Honorable Dennis Montali

Objection Deadline: May 31, 2022

The Kane Law Firm respectfully files this motion to allow the late filing of a proof of claim and deem the proof of claim as having been timely filed for the moving party herein, Benjamin Walker.

1 I.

2 **SUMMARY OF ARGUMENT**

3 A proof of claim may be deemed timely upon a showing of excusable neglect and lack of
4 prejudice. The Supreme Court in *Pioneer Investment Services v. Brunswick Associated Ltd.*
5 *Partnership*, 507 U.S. 380 (1993) set forth the factors that must be considered in ruling on
6 whether a late claim should be allowed in the context of a bankruptcy filing. These factors to be
7 considered are as follows:

- 8 1. The danger of prejudice to the Debtor,
9 2. The length of delay and its potential impact on judicial proceedings,
10 3. The reason for the delay, including whether it was within the reasonable control of the
11 movant, and
12 4. Whether the movant acted in good faith. *Pioneer Investment Services, supra* at 395.

13 In this case, Benjamin Walker who resided at 6371 Forest Lane, Paradise, California, left
14 his home to assist his father to evacuate. Mr. Walker did not lose real or personal property in the
15 fire but suffered emotional distress. As he did not loss property, he was unaware that he could
16 file a claim for emotional distress.

17 As set forth below, the movant meets all these factors. Indeed, if this motion is *not* granted
18 it is the movant who will suffer substantial prejudice.

19 II.

20 **PROCEDURAL BACKGROUND**

21 On January 29, 2019, the Debtors, PG&E Corporation and Pacific Gas and Electric
22 Company (“Debtors”) filed a voluntary Chapter 11 Petition. *See* Dkt. 1. On July 2, 2019, the
23 Court entered an order establishing October 21, 2019 (“the bar date”) as the deadline for Fire
24 Victim claimants to file proofs of claim in this bankruptcy. *See* Dkt. 2806. That deadline was
25 extended to December 31, 2019 (“the “extended bar date.”). *See* Dkt. 4872.

26 III.

27 **FACTUAL BACKGROUND**

28 Claimant Benjamin Walker resided at 6371 Forest Lane, Paradise, California at the time of

1 the Camp Fire. His property was not damaged. However, he suffered emotional distress as a
2 resulting from having to evacuate and the destruction of his community. He was unaware that he
3 could file a claim for emotional distress until recently. He has filed a Proof of Claim, Number
4 108260. (See Exhibit A to this motion.)

5 IV.

6 ARGUMENT

7 The time in which to make claims in a Chapter 11 Bankruptcy may be extended by motion
8 based on excusable neglect. Federal Rules of Bankruptcy Procedure, Rule 9006(b)(1) provides:

9 (b) Enlargement.

10 (1) *In general.* Except as provided in paragraphs (2) and (3) of this subdivision,
11 when an act is required or allowed to be done at or within a specified period by
12 these rules or by a notice given thereunder or by order of court, the court for cause
13 shown may at any time in its discretion (1) with or without motion or notice order
14 the period enlarged if the request therefore is made before the expiration of the
15 period originally prescribed or as extended by a previous order or (2) **on motion
made after the expiration of the specified period permit the act to be done
where the failure to act was the result of excusable neglect.**

14 Fed R. Bank. Proc. 9006.(b)(1). *Emphasis supplied.*

15 Determination of excusable neglect has been interpreted by the United States Supreme
16 Court as an equitable consideration.

17 “We conclude the determination at bottom an equitable one, taking account of all relevant
18 circumstances surrounding the party’s omission. These include. . .the danger of prejudice
19 to the debtor, the length of the delay and its potential impact on judicial proceedings, the
20 reason for the delay, including whether it was within the reasonable control of the movant,
21 and whether the movant acted in good faith.”*Pioneer Inv. Servs v. Brunswick Assoc.*
Ltd.P’ship, 507 U.S. 380, 395 (1993)

21 Here, there is no danger of prejudice to the Debtors. Where the claim does not disrupt the
22 distribution process, no prejudice will result. *In re Sacred Heart Hosp.* 186 B.R. 891, 897.
23 (“Exactly how the debtor’s assets are distributed is ultimately of little consequence to the
24 debtor, so long as the claim is not filed so late as to disrupt the distribution process.”)

25 Further, the delay is not significant. The Trust has only completed determinations (not
26 reconsiderations or appeals) on approximately 50% of all claims. Allowing the late claim will not
27 delay the proceedings.

1 The reason for the delay in filing a claim was that Benjamin Walker simply misunderstood
2 the process. Excusable neglect will be found even where sophisticated attorneys miss a deadline.
3 *ZiLOG, Inc. v. Corning (In re ZiLOG, Inc.)*, 450 F.3d 996, 1006 (9th Cir. 2006). The case for
4 excusable neglect is even more compelling when the mistake was made by an unrepresented
5 layperson. *Id.*

6 Further, Benjamin Walker acted in good faith. The failure to file was not based on
7 litigation tactics where a party deliberately misses a deadline to gain advantage. (See e.g., *Venice*
8 *Baking Co. v. Sophast Sales & Mkg. LLC* 2016 U.S. Dist LEXIS 141533 where relief was denied
9 because counsel purposefully chose not to oppose a motion as a litigation tactic). Here the delay
10 was inadvertent and the movant's lack of understanding of the claims process after a trust fund
11 had already been established to satisfy the claim.

12 And, finally, the likelihood of injustice is great if this claim is not permitted. Benjamin
13 Walker is a Camp Fire victim whose primary avenue for compensation is through this bankruptcy.

14 V.

15 **CONCLUSION**

16 For the reasons set forth above, Movant respectfully requests that this Court enter an
17 Order pursuant to Bankruptcy Rule 9006(b)(1) as follows:

- 18 1. Granting the Motion;
- 19 2. Finding that the Movant be allowed to file a Proof of Claim and deem it as having been
20 timely filed;
- 21 3. Granting such other or further relief as the Court deems just and proper.

22
23 Dated: April 29, 2022

Respectfully submitted,

24 THE KANE LAW FIRM

25
26
27 By: _____/s/
BONNIE E. KANE
28 Attorneys for Benjamin Walker